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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

MOHAMMAD RAHMANI NEJAD, Plaintiff and Appellant, v. CHRISTOPHER R. ABERNATHY, et al., Defendants and Respondents.	B304481 c/w B307759 (Los Angeles County Super. Ct. No.19STCV11880)

APPEAL from orders of the Superior Court of Los Angeles County, Elaine Lu, Judge. Affirmed as modified.

The Appellate Law Firm, Berangere Allen-Blaine for Plaintiff and Appellant Mohammad Rahmani Nejad.

Law Offices of Dilip Vithlani, Dilip Vithlani for Defendants and Respondents Christopher R. Abernathy and Eugene Carson III.

Law Office of Howard Goodman and Howard Goodman for Defendant and Respondent Jack Zuckerman.

INTRODUCTION

Respondents, attorneys Christopher Abernathy and Eugene Carson, represented appellant Mohammad Rahmani Nejad's former wife in the underlying divorce case. Respondent Jack Zuckerman was an independent accounting expert, appointed by the court pursuant to the parties' stipulation. After settling the divorce case, Nejad brought the instant case against respondents, alleging that they conspired to exploit the underlying divorce case through various statements and omissions made in their respective roles as counsel (Abernathy and Carson) and independent expert (Zuckerman). Zuckerman filed a motion under Code of Civil Procedure section 425.16, commonly known as the anti-SLAPP statute, to strike Nejad's claims against him. (See *Rand Resources, LLC v. City of Carson* (2019) 6 Cal.5th 610, 615.) Abernathy and Carson followed suit, filing an anti-SLAPP motion to strike Nejad's similar claims against them. In addition to opposing the motions, Nejad moved for relief from the discovery stay automatically imposed by their filing, requesting permission to depose respondents and other prospective witnesses. The trial court granted both

anti-SLAPP motions and dismissed all claims against respondents, concluding that the claims arose from activity protected by both the anti-SLAPP statute (shifting the burden to Nejad to establish a probability of prevailing on the claims) and the litigation privilege set forth in Civil Code section 47, subdivision (b) (preventing Nejad from meeting his burden). Reasoning that Nejad's requested discovery would not change these conclusions, the court denied Nejad's motion for relief from the discovery stay. The court also denied Nejad's subsequent motion for reconsideration of its order granting Abernathy and Carson's anti-SLAPP motion.

Zuckerman filed a motion to recover attorney fees, as did Abernathy and Carson. Nejad did not dispute respondents' entitlement to fees as prevailing anti-SLAPP movants, but disputed the reasonableness of the amounts of fees claimed. Granting both fee motions, the court found counsel's claimed hourly rates reasonable, made certain reductions to the hours claimed, and awarded fees for the remaining hours.

In Nejad's consolidated appeals from the orders granting respondents' anti-SLAPP and fee motions, he contends the trial court erred in (1) granting respondents' anti-SLAPP motions; and (2) calculating the amounts of attorney fees to award respondents. Respondents dispute his contentions. Abernathy and Carson additionally contend that Nejad's appeal from the order granting their anti-SLAPP motion was untimely.

We reject Abernathy and Carson's challenge to the timeliness of Nejad's appeal. On the merits, we reject Nejad's challenges to the trial court's orders granting respondents' anti-SLAPP motions. We further reject his challenge to the orders awarding attorney fees, except in one minor respect: we conclude the trial court, relying on a misunderstanding of the law advanced by Zuckerman, erred in awarding him $262.50 in fees for preparation of a demand letter. We therefore affirm the order granting Zuckerman's motion for attorney fees as modified by a reduction of the fee award from $23,362.50 to $23,100. We affirm the other orders in their entirety.

BACKGROUND

A. *Nejad's Complaint*

In 2013, Nejad's then-wife filed a petition for dissolution of their marriage. She was represented in the divorce case by Abernathy and Carson. In 2015, pursuant to a stipulation by the parties, the family court appointed Zuckerman as an independent forensic accounting expert, tasked with preparing a report on the tracing of community and separate property acquired during the marriage. In 2016, Zuckerman submitted his report and testified at trial that after reviewing additional documents sent to him by Nejad, he believed the report was reliable. Nearly a year later, he was recalled as a witness at the ongoing trial, shown several of the additional documents Nejad had sent him, and testified that because he had prepared his report

without reviewing those documents, the report was not reliable. The family court replaced Zuckerman with a different expert (without finding he had engaged in any misconduct), and the parties soon thereafter settled the case. The family court denied Nejad's subsequent request for sanctions against Abernathy and Carson for allegedly conspiring with Zuckerman to delay resolution of the case and inflate its costs. In reviewing the history of acrimony between Nejad and Carson during the divorce case, the family court quoted a 2016 email from Nejad to Carson, in which Nejad promised to file a lawsuit against Carson for his conduct in litigating the divorce case, vowing, "Once this case is over, I will have only one MISSION in life and that is to make sure you get what you deserve."

In August 2019, Nejad filed the first amended complaint (FAC) in this action, naming respondents as defendants.[1] At the outset, the FAC announced that "[t]his case involves damages sustained by Plaintiff in [the underlying divorce case]." The FAC contained causes of action against respondents for fraud, conspiracy to commit fraud, aiding and abetting (against Abernathy and Carson only), bribery, intentional and negligent infliction of emotional distress, unfair business practices (against Zuckerman only), and violations of the Racketeer Influenced and Corrupt Organizations Act.

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[1] Nejad also named as a defendant his own divorce counsel, who is not a party to this appeal.

In support of these claims, Nejad alleged that respondents conspired to exploit the underlying divorce case in their roles as counsel and an independent expert, as follows: (1) respondents failed to disclose that Zuckerman was serving as an expert in other cases in which Abernathy was counsel, thereby concealing a conflict of interest that should have disqualified Zuckerman as an expert witness; (2) Abernathy and Carson disclosed the accounting-expert budget to Zuckerman, as an alleged bribe intended to help him inflate his bills; (3) Abernathy and Carson withheld Nejad's full bank records from Zuckerman when he was preparing his expert report; (4) Zuckerman submitted a fraudulent report based on the incomplete records; (5) after Nejad provided the full bank records, Zuckerman -- acting on Abernathy's instruction -- refused to supplement his report to take the full records into account; and (6) Zuckerman falsely testified at trial that he had reviewed the full bank records.[2] Nejad sought, inter alia, damages for "unnecessary attorney fees" incurred in the divorce case.

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[2] Most causes of action omitted detail in favor of incorporating by reference prior allegations, including those in the "Introduction" to the FAC. The Introduction alleged: (1) "ABERNATHY and ZUCKERMAN did not disclose that they had other ongoing cases together which would allow them to have ex-parte communications regarding the Divorce case"; (2) "During ZUCKERMAN's evaluation CARSON and ABERNATHY helped him charge over $25,000 in excess fees in return for his cooperation with them which was a bribe disguised as accounting fees"; (3) "CARSON tampered bank records related to the Divorce

(Fn. is continued on the next page.)

B. *The Anti-SLAPP Motions*

In September 2019, Zuckerman filed an anti-SLAPP motion. Soon thereafter, Abernathy and Carson filed their own anti-SLAPP motion. The motions automatically stayed discovery. (See Code Civ. Proc., § 425.16, subd. (g) ["All discovery proceedings in the action shall be stayed upon the filing of a notice of motion made pursuant to this section"].) Nejad filed a motion for relief from the discovery stay. (See *ibid.* ["The court, on noticed motion and for good cause shown, may order that specified discovery be conducted notwithstanding this subdivision"].)

1. Briefing

To meet their burden at the first step of the anti-SLAPP analysis, respondents argued that Nejad's claims arose from their statements and communicative conduct in their roles as counsel and independent expert witness in the

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and sent them to ZUCKERMAN"; (4) "ZUCKERMAN realized the bank records were tampered but turned a blind eye and prepared a fraudulent Report based on them and allocated over a million dollars of Plaintiff's separate properties to the community"; (5) "Plaintiff obtained the untampered bank records and asked ZUCKERMAN to accept them but he refused," as "ABERNATHY had instructed him not to examine them"; and (6) "On the 1st day of the trial in the Divorce ('Trial') ZUCKERMAN testified that he had fully examined the bank records sent to him by Plaintiff." The allegations in support of the bribery cause of action clarified that Abernathy and Carson allegedly helped Zuckerman charge excess fees by, inter alia, providing a "bribe of information about the forensic accounting budget for the Underlying Action . . . ."

divorce case, and that this activity was protected by the anti-SLAPP statute. With respect to the second step of the anti-SLAPP analysis, they argued that Nejad could not meet his burden to show a probability of prevailing on his claims, because the claims were barred by the litigation privilege. In arguing that the litigation privilege applied, they relied on, inter alia, *Silberg v. Anderson* (1990) 50 Cal.3d 205 (*Silberg*) and *Ramalingam v. Thompson* (2007) 151 Cal.App.4th 491 (*Ramalingam*), which we discuss below.[3] Respondents also submitted declarations denying Nejad's allegations of misconduct.

In opposition to both motions, Nejad argued that his claims arose from unprotected activity because respondents' alleged acts were illegal and unrelated to any issue under consideration in the divorce case, such as the classification of the spouses' property. Nejad argued that the litigation privilege did not apply because his claims arose from a tortious course of noncommunicative conduct, viz., respondents' "[c]onspiring to, and implementing a scheme to, enrich themselves . . . through exploitation of the Underlying Case in their roles as attorneys for a party and as a court

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[3] In the alternative, respondents argued that in light of the family court's denial of Nejad's request for sanctions against Abernathy and Carson for allegedly conspiring with Zuckerman, Nejad's claims were barred by res judicata or the interim adverse judgment rule. We need not address Nejad's appellate arguments concerning these doctrines, as the trial court did not rely on them, and we find no error in the court's reliance on the litigation privilege.

appointed, ostensibly independent, expert." Relying principally on his own declaration and attached exhibits, he argued that he had produced sufficient evidence of respondents' alleged misconduct to establish a probability of prevailing on his claims. Nejad requested (and separately moved for) permission to depose respondents and several other prospective witnesses, arguing they controlled the only sources of information which could reveal the existence of the alleged conspiracy. He made no attempt to explain how the depositions might assist him in disputing the applicability of the anti-SLAPP statute or the litigation privilege.[4]

In reply, respondents generally repeated their initial arguments concerning the anti-SLAPP statute and the litigation privilege, and objected to numerous portions of and exhibits to Nejad's declaration, on various grounds.

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[4] In opposing Zuckerman's motion (some weeks after opposing Abernathy and Carson's), Nejad relied on additional evidence of ex parte communications among respondents. Nejad later relied on this purportedly new evidence in moving for reconsideration of the trial court's order granting Abernathy and Carson's motion. The court denied the motion for reconsideration on the grounds that Nejad had not shown reasonable diligence in producing the evidence, and that, in any event, the evidence did not change the court's conclusion that Nejad's claims arose from activity protected by both the anti-SLAPP statute and the litigation privilege. We deny respondents' motion to strike a portion of Nejad's reply brief in which he argues, for the first time, that he is entitled to consideration of this evidence on appeal. The evidence is immaterial to our analysis.

2. Hearings

On November 6, 2019, the trial court held a hearing on Abernathy and Carson's anti-SLAPP motion, as well as Nejad's motion for relief from the discovery stay. The court asked Nejad to specify the alleged conduct underlying each of his claims against Abernathy and Carson, and Nejad generally confirmed that the claims were based on the six categories of litigation activity identified above. Abernathy and Carson's counsel argued that Nejad had confirmed his claims arose from their communicative conduct in litigating the divorce case, which was protected by the litigation privilege. Without disputing counsel's characterization of his claims, Nejad argued that the litigation privilege does not protect conspiracy to commit fraud, obstruction of justice, or infliction of emotional distress. In support of his motion for relief from the discovery stay, Nejad argued that because he would eventually depose the prospective witnesses in the course of litigating his claims against his own counsel, he should be allowed to depose them before the court ruled on the anti-SLAPP motions. The court took the motions under submission.

On December 20, 2019, the court held a hearing on Zuckerman's motion. The record does not include a reporter's transcript (or authorized substitute) concerning the hearing.

3. Rulings

On November 19, 2019, the trial court issued a 23-page order granting Abernathy and Carson's anti-SLAPP motion and denying Nejad's motion for relief from the discovery stay. A certificate of mailing executed the same day stated that the clerk of the court had served "the Minute Order (Ruling on Submitted Matter) of 11/19/2019" on each party. In December 2019, the court issued a 20-page order granting Zuckerman's anti-SLAPP motion.

In its detailed orders, the court concluded that each of Nejad's claims against respondents arose from activity protected by Code of Civil Procedure section 425.16, subdivisions (e)(1) and (e)(2) (Subdivision (e)(1) and Subdivision (e)(2), respectively). Reviewing the FAC at length and addressing each of its claims, the court found that the gravamen of the claims consisted of (1) respondents' "non-disclosure of [Zuckerman's] conflict"; (2) Abernathy and Carson's "communication of the forensic accounting budget" to Zuckerman; (3) Abernathy and Carson's "selection of what evidence to provide and what evidence to withhold" when Zuckerman was preparing his report; (4) Zuckerman's "causing a false and fraudulent forensic accounting report to be submitted to the court"; (5) Abernathy and Carson's "objections to Plaintiff's supplementing the records," which Zuckerman honored; and (6) Zuckerman's "committing perjury." The court concluded that each of these categories constituted "either communicative conduct regarding matters under consideration in the Dissolution [protected by

Subdivision (e)(2)] or conduct which occurred immediately before the Court [protected by Subdivision (e)(1)]."

Proceeding to the second step of the anti-SLAPP analysis, the court concluded that Nejad had not met his burden to show a probability of prevailing on his claims, as his claims were all barred by the litigation privilege.[5] The court explained that the litigation privilege applied because the gravamen of Nejad's claims consisted of communicative conduct that was logically and "intimately" connected with the divorce case. Relatedly, in denying Nejad's motion for relief from the discovery stay, the court explained that because Nejad's claims were barred by the litigation privilege, the requested discovery would not change the court's ruling.

On February 13, 2020 (86 days after the court issued its order granting Abernathy and Carson's motion), Nejad appealed the orders granting both anti-SLAPP motions.

C. *The Attorney Fee Motions*

In January 2020, Zuckerman filed a motion to recover attorney fees and costs as a prevailing anti-SLAPP movant. (See Code Civ. Proc., § 425.16, subd. (c)(1) ["a prevailing defendant on a special motion to strike shall be entitled to

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[5] In the alternative, having sustained many objections to Nejad's declaration and its exhibits, the court concluded that Nejad had made an insufficient evidentiary showing to establish a probability of prevailing on his claims.

recover his or her attorney's fees and costs"].) Soon after, Abernathy and Carson filed their own fee motion.

1. Zuckerman's Fee Motion

a. Briefing

Zuckerman moved for an award of nearly $28,000 in attorney fees, comprising the product of his counsel's claimed hourly rate of $350 and 79.75 hours claimed for work on the anti-SLAPP and fee motions. In support of the claimed hours and rate, Zuckerman submitted the declaration of his counsel, Howard Goodman, who had been an attorney for about 40 years. Goodman attached his itemized fee statements for work on the anti-SLAPP motion, and described his past and expected future hours of work on the fee motion. Goodman declared, "I regularly charge $450/hour in litigation matters in which I am retained on an hourly fee basis. However, I charge a lower rate for [Zuckerman's accounting firm] because of a special relationship with this client. My hourly rate for th[is] firm is $350/hour."

Nejad did not dispute Zuckerman's entitlement to attorney fees or the reasonableness of Goodman's discounted rate of $350. He did dispute the reasonableness of the hours claimed. He argued the court should strike the hours claimed in 15 of Goodman's billing entries, arguing the entries reflected work that was unnecessary for the anti-SLAPP motion. He further argued that the court should reduce the remaining hours claimed by 30 percent to account

for alleged "block billings," meaning "several large blocks of time with no more than very generalized descriptions."

In reply, Zuckerman argued that Goodman's billing records were not block-billed, as each billing entry identified the associated work with sufficient detail to determine that it was related to the anti-SLAPP motion. Zuckerman defended the reasonableness of each of the 15 billing entries Nejad challenged. Goodman represented, inter alia, that (1) an entry for "Assembling motion for filing" referred to the anti-SLAPP motion; and (2) an entry for "Additional work, preparing Zuckerman declaration" referred only to additional work on Zuckerman's supporting declaration (which counsel had started working on earlier). In defending an entry for "Preparation of demand letter to dismiss," Zuckerman argued, "The meet and confer letter was required pursuant to Section 435.5 of the California Code of Civil Procedure[,] which provides that parties must meet and-confer at least five (5) days before a motion to strike is filed." Zuckerman did not quote the cited statute, which provides, "Before filing a motion to strike pursuant to this chapter [i.e., Code of Civil Procedure sections 435 to 437b], the moving party shall meet and confer . . . ." (Code Civ. Proc., § 435.5, subd. (a).)

b. Ruling

In August 2020, after a hearing, the trial court granted Zuckerman's fee motion and awarded him $23,362.50 in

attorney fees.[6] The award included $262.50 for Goodman's preparation of the demand letter. In finding the demand letter reasonably necessary for the anti-SLAPP motion, the court accepted Zuckerman's argument, explaining, "[T]here is a requirement to meet and confer. (CCP § 435.5.) Accordingly, this time spent is appropriate."

The court rejected most of Nejad's challenges to specific billing entries. It expressly credited Goodman's representation that the entry for "Assembling motion for filing" referred to the anti-SLAPP motion, and implicitly credited his representation that the entry for "Additional work, preparing Zuckerman declaration" referred only to additional work on Zuckerman's supporting declaration. In finding reasonable the hours claimed for a motion to advance the hearing date on Zuckerman's anti-SLAPP motion, the court explained that "[d]ue to the backlog of cases on the court's congested motions calendar, it was reasonably necessary to seek to advance the special motion to strike." The court found reasonable the hours claimed for legal research on the following topics: (1) the anti-SLAPP statute's applicability to claims against a jointly retained, court-appointed expert; (2) the litigation privilege "and use of SLAPP motion to respond to complaint"; and (3) anti-SLAPP motions filed in similar actions. Finally, the court likewise found reasonable the hours claimed for review of

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[6] In his appeal from the fee orders, Nejad elected to proceed without a record of the oral proceedings.

the following filings in this action: (1) Nejad's complaint "and documents from Zuckerman"; (2) Nejad's brief and declaration in opposition to Abernathy and Carson's anti-SLAPP motion; (3) Abernathy and Carson's reply in support of their anti-SLAPP motion; (4) Nejad's motion for reconsideration of the order granting Abernathy and Carson's anti-SLAPP motion; and (5) the court's tentative ruling on Zuckerman's anti-SLAPP motion.

Agreeing (in whole or in part) with Nejad's remaining challenges to the billing entries, the court (1) struck the hours claimed for a November 7, 2019 hearing that never occurred; and (2) reduced the hours claimed for a November 5, 2019 case management conference and for the December 20 hearing on Zuckerman's anti-SLAPP motion, which had coincided with another case management conference. The court also reduced the hours claimed for the fee motion itself. The court implicitly denied Nejad's request for a further reduction to account for alleged block billing.

The court concluded, "[A]nti-SLAPP motions are complex motions that require skill, time, and extensive research in an ever-evolving area of the law. Zuckerman's anti-SLAPP motion involved seven causes of action and one notably difficult issue of whether the litigation privilege applies. Thus, the court finds that the hours claimed for the anti-SLAPP motion are reasonable with the reductions noted above." Multiplying the reduced number of hours by Goodman's unchallenged, discounted rate of $350, the court awarded Zuckerman $23,362.50 in attorney fees.

2. Abernathy and Carson's Fee Motion

a. Briefing

Abernathy and Carson moved for an award of over $58,000 in attorney fees and costs, claiming over 80 hours of work on the anti-SLAPP motion (which they argued should be enhanced by a "multiplier" of 1.5), 15.7 hours of work on the fee motion, and an hourly rate of $395. In support of the claimed hours and rate, they submitted the declaration of their counsel, Michael Kim, who had been an attorney for nearly 20 years. Kim attached his itemized billing record for work on the anti-SLAPP motion, and described his past and expected future hours of work on the fee motion. Kim declared that he was a senior partner in his firm, and continued, "I charge my clients at the hourly rate of $395.00 per hour. Based on [a] study of [the] National Association of Legal Fee Analysis for the Los Angeles area (adjusted to 2016), senior partners (with 11-19 years of experience), the accepted billing rate is between $450.00 to $640.00. My rate of $395.00 per hour is well below the range that senior partners charge in the Southern California area."

Nejad challenged both Kim's rate and the hours claimed. He argued Kim's $395 rate was unreasonable because (1) Goodman, who was more experienced than Kim, had billed Zuckerman at the lower rate of $350; and (2) Kim had failed to provide a copy of the study he cited or to establish that the study applied to him in the context of this case. Nejad did not produce any evidence contradicting Kim's declaration or otherwise bearing on the reasonable

rate for Kim's work. With respect to the hours claimed, Nejad argued that the court should strike the hours claimed in five of Kim's billing entries, and reduce the remaining hours claimed by 30 percent to account for alleged block billing.

In reply, Abernathy and Carson argued that Kim's rate was reasonable in comparison to the market rate, defended the five challenged billing entries, and disputed Nejad's allegation of block billing.

b. Ruling

In October 2020, after a hearing, the trial court granted Abernathy and Carson's fee motion and awarded them $31,916 in attorney fees. The court denied Abernathy and Carson's request for a "multiplier" enhancement.[7]

The court found Kim's $395 rate reasonable, explaining, "This rate is below the rate found for Senior partners in the Los Angeles area with similar years of experience. (Kim Decl. ¶ 6.) [¶] . . . The declaration clearly shows that the cited National Association of Legal Fee Analysis for the Los Angeles area would apply. Attorney Kim has nearly 19 years of experience, within the 11-19 years of experience listed, and is a senior partner, within the category of attorneys listed in the study. Therefore, the

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[7] Because the trial court denied respondents' request for an enhancement, we need not address Nejad's appellate arguments concerning that request.

study would apply. As to the lower rate charged by co-defendant's attorney [Goodman], the court notes that counsel there had a normal hourly rate of $450 but reduced that hourly rate for those particular clients. (Goodman Decl. ¶ 3, filed 1/24/20.)"

The court rejected three of Nejad's challenges to specific billing entries, finding reasonable the hours claimed for review of Nejad's complaint and his motion for relief from the discovery stay, and for preparation of an application for permission to file a longer memorandum in support of the anti-SLAPP motion. However, the court agreed in part with Nejad's remaining challenges, reducing the hours claimed for (1) the hearing on the application to file a longer memorandum, which coincided with a case management conference; and (2) the hearing on Abernathy and Carson's anti-SLAPP motion, which also coincided with a case management conference. The court also reduced the hours claimed for the fee motion itself. The court implicitly denied Nejad's request for a further reduction to account for alleged block billing.

Again noting the complexity of the issues presented by the anti-SLAPP motion, the court found the reduced number of hours reasonable. Multiplying them by Kim's rate of $395, the court awarded Abernathy and Carson $31,916 in attorney fees. Nejad timely appealed both fee orders.

DISCUSSION

A. *Anti-SLAPP*

Nejad contends the trial court erred by granting respondents' anti-SLAPP motions. As a preliminary matter, we reject Abernathy and Carson's challenge to the timeliness of Nejad's appeal from the order granting their anti-SLAPP motion. The deadline to appeal an appealable order is 180 days from the order's entry, unless a party or the clerk of the court has served the appellant with a document entitled "notice of entry" of the order or a filed-endorsed copy of the order itself, in which case the deadline is shortened to 60 days from such service. (Cal. Rules of Court, rule 8.104(a)(1)(A)-(C); Eisenberg et. al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2021) Ch. 3-B ¶¶ 3:11, 3:14, 3:17.) Here, the certificate of mailing on which Abernathy and Carson rely indicated that Nejad was served only with the "Minute Order" associated with the ruling on their anti-SLAPP motion -- not with a notice of entry or a filed-endorsed order. Service with the minute order was insufficient to trigger the 60-day deadline. (See *Sunset Millennium Associates, LLC v. Le Songe, LLC* (2006) 138 Cal.App.4th 256, 259-260 [60-day deadline not triggered by clerk's service of minute order, despite minute order's inclusion of "notice of entry" language on page 13 of 14].) Because Abernathy and Carson have failed to show that the 60-day deadline applied, we apply the default 180-day deadline. Nejad satisfied that deadline because, as Abernathy and Carson acknowledge, he filed his notice of

appeal 86 days after the order was entered. We conclude the appeal was timely.[8]

1. Principles

a. The Anti-SLAPP Statute

We review de novo a trial court's ruling on an anti-SLAPP motion. (*Monster Energy Co. v. Schechter* (2019) 7 Cal.5th 781, 788.) "At the first step of the [anti-SLAPP] analysis, the defendant must make two related showings. Comparing its statements and conduct against the statute, it must demonstrate activity qualifying for protection. [Citation.] And comparing that protected activity against the complaint, it must also demonstrate that the activity supplies one or more elements of a plaintiff's claims." (*Wilson v. Cable News Network, Inc.* (2019) 7 Cal.5th 871, 887 (*Wilson*).) In other words, the defendant must show that the challenged claims arose from protected activity. (See *id.* at 884, 887-888.)

Under Subdivisions (e)(1) and (e)(2), respectively, protected activity includes "any written or oral statement or writing made before a . . . judicial proceeding," and "any written or oral statement or writing made in connection with

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[8] The cases on which Abernathy and Carson rely are distinguishable. (See *Reyes v. Kruger* (2020) 55 Cal.App.5th 58, 65, 68 [clerk served filed-endorsed copy of order]; *Marshall v. Webster* (2020) 54 Cal.App.5th 275, 280 [same]; *Melbostad v. Fisher* (2008) 165 Cal.App.4th 987, 996-997 [party served document entitled "'Notice of Entry of Order'"].)

an issue under consideration or review by a . . . judicial body." (Code Civ. Proc., § 425.16, subds. (e)(1)-(2).) "Under the plain language of section 425.16, subdivisions (e)(1) and (2), as well as the case law interpreting those provisions, all communicative acts performed by attorneys as part of their representation of a client in a judicial proceeding . . . are per se protected as petitioning activity by the anti-SLAPP statute." (*Cabral v. Martins* (2009) 177 Cal.App.4th 471, 479-480; accord, *Optional Capital, Inc. v. Akin Gump Strauss, Hauer & Feld LLP* (2017) 18 Cal.App.5th 95, 106-107, 113 (*Optional Capital*).) "Recognized petitioning activities . . . include not only the conduct of litigation but also acts and communications reasonably incident to litigation . . . ." (*Bonni v. St. Joseph Health System* (2021) 11 Cal.5th 995, 1024-1025.) Indeed, we and other courts, including our Supreme Court, have applied Subdivision (e)(2) to *omissions* in the course of litigation. (See *Navellier v. Sletten* (2002) 29 Cal.4th 82, 89-90 [Subdivision (e)(2) protected defendant's failure to disclose disagreement with release before executing it]; *Suarez v. Trigg Laboratories, Inc.* (2016) 3 Cal.App.5th 118, 122-125 [Subdivision (e)(2) protected defendant's failure to disclose, during settlement negotiations, potential sale of business]; *Crossroads Investors, L.P. v. Federal National Mortgage Assn.* (2017) 13 Cal.App.5th 757, 779, fn. 9, 782 [Subdivision (e)(2) protected defendant's failure to respond to accounting requests made in settlement discussions].)

All categories of protected activity are subject to an exception, established in *Flatley v. Mauro* (2006) 39 Cal.4th 299 (*Flatley*), for conduct illegal as a matter of law. (*City of Montebello v. Vasquez* (2016) 1 Cal.5th 409, 423.) But our Supreme Court has emphasized the narrow scope of this exception: "We made it clear in *Flatley* that conduct must be illegal *as a matter of law* to defeat a defendant's showing of protected activity. The defendant must concede the point, or the evidence conclusively demonstrate it, for a claim of illegality to defeat an anti-SLAPP motion at the first step." (*Id.* at 424.)

"If the court determines that relief is sought based on allegations arising from activity protected by the statute, the second step is reached. There, the burden shifts to the plaintiff to demonstrate that each challenged claim based on protected activity is legally sufficient and factually substantiated." (*Baral v. Schnitt* (2016) 1 Cal.5th 376, 396.) "[T]he plaintiff is required to establish a probability of prevailing on any claim for relief based on allegations of protected activity. Unless the plaintiff can do so, the claim and its corresponding allegations must be stricken." (*Id.* at 395.)

b. The Litigation Privilege

Civil Code section 47, subdivision (b) sets forth the litigation privilege, providing (subject to certain exceptions) that any "publication or broadcast" made in a judicial proceeding is privileged. Courts have looked to the litigation

privilege as "an aid in construing the scope of section 425.16, subdivision (e)(1) and (2) with respect to the first step of the two-step anti-SLAPP inquiry . . . ." (*Flatley*, *supra*, 39 Cal.4th at 322-323.) "The litigation privilege is also relevant to the second step in the anti-SLAPP analysis in that it may present a substantive defense a plaintiff must overcome to demonstrate a probability of prevailing." (*Id.* at 323.) This is true because the privilege, where it applies, bars all tort claims other than malicious prosecution claims. (*Mireskandari v. Gallagher* (2020) 59 Cal.App.5th 346, 367 (*Mireskandari*).)

"The usual formulation is that the privilege applies to any communication (1) made in judicial or quasi-judicial proceedings; (2) by litigants or other participants authorized by law; (3) to achieve the objects of the litigation; and (4) that have some connection or logical relation to the action." (*Silberg*, *supra*, 50 Cal.3d 205, 212.) "The litigation privilege also protects a defendant's silence having some relation to a judicial proceeding when the silence is communicative." (*Crossroads Investors, L.P. v. Federal National Mortgage Assn.*, *supra*, 13 Cal.App.5th at 786.) "'"[I]f the gravamen of the action is communicative, the litigation privilege extends to noncommunicative acts that are necessarily related to the communicative conduct[.]"' [Citation.] To show that the litigation privilege does not apply, the burden is on the plaintiff to demonstrate that "'an independent, noncommunicative, wrongful act was the gravamen of the action[.]'"' (*Mireskandari*, *supra*, 59 Cal.App.5th 346, 369.)

We find instructive two cases applying the litigation privilege to claims remarkably similar to Nejad's. In *Silberg*, the plaintiff sued the attorney who had represented his former wife in their divorce case, during which the parties had stipulated to the appointment of a psychologist as an independent expert on visitation and custody issues. (*Silberg*, *supra*, 50 Cal.3d 205 at 210.) The psychologist was selected on the recommendation of the former wife's attorney, who represented that the psychologist was neutral. (*Ibid.*) In support of his claims against the attorney for fraud (or intentional infliction of emotional distress) and negligence, the plaintiff alleged the attorney had failed to disclose that she had a preexisting relationship with the psychologist, creating a conflict of interest that resulted in the psychologist's submission of a biased and inaccurate report. (*Id.* at 210-211 & fn. 3.) The trial court sustained a demurrer to all claims on the ground that they were barred by the litigation privilege, but the Court of Appeal reversed with respect to the fraud claim, applying an "interest of justice" test for application of the litigation privilege. (*Id.* at 211.) Disapproving this test and reversing this portion of the Court of Appeal's judgment, our Supreme Court commented, "It is, of course, true that 'justice,' in the sense of 'fairness,' is not served where an attorney seeks to deceive a party into relying on an expert by misrepresenting the expert's impartiality. However, the evils inherent in permitting derivative tort actions based on communications during the trial of a previous action are . . . far more

destructive to the administration of justice than an occasional 'unfair' result." (*Id.* at 213.) The court held that the litigation privilege "plainly" applied to the attorney's statements about the expert, which satisfied the usual four-part test: they were (1) made in the context of a judicial proceeding (2) by an authorized participant, and they both (3) furthered the objects of the litigation and (4) were logically related to the action. (*Id.* at 219-220.)

The same principles were applied to a claim against an expert witness in *Ramalingam*, *supra*, 151 Cal.App.4th 491. There, the parties to a divorce case stipulated to the appointment of an accountant as an independent expert on community property and support issues. (*Id.* at 494-495.) The family court, relying in part on the accountant's trial testimony concerning the sale of certain stock earned during the marriage, issued a ruling adverse to the wife. (*Id.* at 495.) The wife brought a claim against the accountant for accounting malpractice, alleging, inter alia, that he had failed to review documentation concerning the stock. (*Id.* at 496.) The trial court granted the accountant's motion for summary judgment on the ground that the claim was barred by the litigation privilege, and the Court of Appeal affirmed. (*Id.* at 494, 498.) The appellate court explained that the gravamen of the complaint was the accountant's communication of his opinions, which satisfied the *Silberg* four-part test, and added, "[I]t is well established that where the gravamen of a complaint is communicative conduct, the litigation privilege necessarily protects related

noncommunicative conduct [citation], including activities done in preparation for testifying [citation]. Thus, [the accountant]'s allegedly negligent investigation of the status of the [relevant] stock in preparation for testifying at the trial on property issues is also protected by the section 47(b)(2) litigation privilege." (*Id.* at 504; see also *Mireskandari*, *supra*, 59 Cal.App.5th at 366 ["The California law on the relevant issue is clear and has been for at least 30 years: . . . the litigation privilege found at Civil Code section 47(b) bars claims by a party against a neutral expert who was retained to provide information for use in court in a pending case"].)

2. First-Step Analysis

The trial court did not err in concluding that each of Nejad's claims against respondents arose from activity protected under Subdivisions (e)(1) and (e)(2). The gravamen of Nejad's complaint comprised six categories of conduct giving rise to each respondent's asserted liability: (1) respondents' nondisclosure of Zuckerman's alleged conflict of interest; (2) Abernathy and Carson's disclosure of the accounting-expert budget to Zuckerman; (3) Abernathy and Carson's withholding of Nejad's full bank records from Zuckerman when he was preparing his expert report; (4) Zuckerman's submission of a report based on the incomplete records; (5) Zuckerman's refusal, on Abernathy's instruction, to supplement his report to take the full records into account; and (6) Zuckerman's testimony at trial that he

had reviewed the full bank records. The first three categories -- concerning respondents' disclosure and nondisclosure of specified information in the course of Zuckerman's appointment and preparation of his report -- comprised statements or omissions that were protected under Subdivision (e)(2) because they were made in connection with an issue under consideration by the family court, viz., the classification of the spouses' property. (See Code Civ. Proc., § 425.16, subd. (e)(2); cf. *Silberg*, *supra*, 50 Cal.3d 205 at 210, 219-220.) The latter three categories -- concerning Zuckerman's report, his failure to supplement his report, and his trial testimony -- comprised statements or omissions before a judicial proceeding, which were protected under Subdivision (e)(1). (See Code Civ. Proc., § 425.16, subd. (e)(1); cf. *Ramalingam*, *supra*, 151 Cal.App.4th at 494-496, 498, 503-504.)

Nejad does not dispute that the challenged statements and omissions were made before the family court or in connection with an issue under consideration by it. On the contrary, he acknowledges (as he acknowledged below) that his claims were based on respondents' alleged scheme to enrich themselves through "exploitation of the Underlying Case in their roles as attorneys for a party and as a court appointed . . . expert." This admission is consistent with the allegations of the FAC, and its opening announcement that this action concerns damages allegedly sustained *in* the divorce case. Respondents' activity in the divorce case was protected. (See *Optional Capital*, *supra*, 18 Cal.App.5th at

106-107, 114-115 [anti-SLAPP statute protected defendants' conduct in course of representing clients in two prior cases, including failure to timely disclose settlement of first case to court in second case]; *Finton Construction, Inc. v. Bidna & Keys, APLC* (2015) 238 Cal.App.4th 200, 210 [anti-SLAPP statute protected defendants' refusal to unconditionally return hard drive that had been delivered to them in their capacity as counsel in separate, ongoing litigation].)

Nejad suggests that his claims did not arise from "statements" within the meaning of Subdivisions (e)(1) and (e)(2), but instead from "the *intentional withholding* of information that the defendant was obligated to disclose or to which the plaintiff was entitled . . . ." However, Nejad's claims arose in part from affirmative statements, including Abernathy and Carson's statements to Zuckerman about the accounting budget, and Zuckerman's report and testimony. Further, as noted, we and other courts have applied Subdivision (e)(2) to *omissions* in the course of litigation activity. (See *Navellier v. Sletten*, *supra*, 29 Cal.4th at 89-90; *Suarez v. Trigg Laboratories, Inc.*, *supra*, 3 Cal.App.5th at 122-125; *Crossroads Investors, L.P. v. Federal National Mortgage Assn.*, *supra*, 13 Cal.App.5th at 779, fn. 9, 782.) Nejad does not argue that these cases were wrongly decided, or that they are inapplicable to his claims.

Nejad suggests that respondents' conduct was not protected because it fell within the *Flatley* exception for conduct illegal as a matter of law. But the *Flatley* exception is inapplicable, as respondents have not conceded that they

engaged in illegal activity, and Nejad produced no evidence conclusively establishing that they did. (See *City of Montebello v. Vasquez*, *supra*, 1 Cal.5th at 424 [*Flatley* exception did not apply to city's claim that councilmembers illegally voted to approve contract in exchange for campaign contributions, where councilmembers denied there was any quid pro quo, and city admitted its claim depended on inferences to be drawn from circumstantial evidence].) *Flatley* and related cases cited by Nejad are distinguishable. (See *Flatley*, *supra*, 39 Cal.4th at 328-333 [defendant's undisputed letter and telephone calls constituted extortion as matter of law]; *Lefebvre v. Lefebvre* (2011) 199 Cal.App.4th 696, 700, 705-706 [defendant did not dispute that her police report was false, as established by finding of factual innocence in criminal case prompted by report]; *City of Colton v. Singletary* (2012) 206 Cal.App.4th 751, 767, 770 [defendant pled guilty to federal bribery offense of corruptly giving cash payments to local government agent].)

In sum, we conclude the trial court did not err in concluding that Nejad's claims arose from protected activity, shifting the burden to Nejad to establish a probability of prevailing on his claims.

3. Second-Step Analysis

The trial court did not err in concluding that Nejad failed to meet his second-step burden to establish a probability of prevailing on his claims. As explained above, the gravamen of Nejad's claims comprised statements and

omissions made by respondents in their roles as counsel and an independent expert in the divorce case, including their concealment of Zuckerman's conflict of interest and Zuckerman's failure to consider certain documentary evidence in preparing his report and testimony. Under *Silberg* and *Ramalingam*, the litigation privilege barred these claims. (See *Silberg*, *supra*, 50 Cal.3d 205 at 210, 219-220 [litigation privilege barred claims against attorney in divorce case for misrepresenting expert's neutrality]; *Ramalingam*, *supra*, 151 Cal.App.4th at 494-496, 498, 503-504 [litigation privilege barred claims against accounting expert in divorce case for, inter alia, failing to review certain documentation in preparing report].) Nejad fails to address the holdings in *Silberg* or *Ramalingam*, despite respondents' reliance on both cases in the trial court and on appeal. The cases Nejad does cite are inapposite. (See *LiMandri v. Judkins* (1997) 52 Cal.App.4th 326, 348 [litigation privilege did not bar claim based on noncommunicative conduct unrelated to pending or anticipated litigation]; *Action Apartment Assn., Inc. v. City of Santa Monica* (2007) 41 Cal.4th 1232, 1249-1252 [litigation privilege preempted city's tenant-harassment ordinance to the extent ordinance prohibited (1) filing of action to recover possession, and (2) service of eviction notice where litigation was contemplated in good faith and under serious consideration].)

In his reply brief, Nejad argues, for the first time, that the trial court abused its discretion by denying his motion

for relief from the discovery stay, speculating that the requested discovery might have enabled him to meet his second-step burden. Nejad forfeited this argument by failing to raise it in his opening brief. (See *People v. Bryant, Smith and Wheeler* (2014) 60 Cal.4th 335, 408 ["'It is axiomatic that arguments made for the first time in a reply brief will not be entertained because of the unfairness to the other party'"].)[9] Even had he timely raised the argument, we would find no abuse of discretion. In moving for permission to depose respondents and others, Nejad made no attempt to explain how the depositions might have enabled him to overcome the litigation privilege. The court reasonably concluded that the requested discovery would not have changed its ruling. Nejad neither challenges the court's reasoning, nor cites any case holding that a trial court abused its discretion by denying a motion for relief from the anti-SLAPP statute's discovery stay. The sole case on which he relies *affirmed* the denial of such a motion. (See *Schroeder v. Irvine City Council* (2002) 97 Cal.App.4th 174, 191-193 [trial court acted within its discretion in denying anti-SLAPP opponent's discovery request, where "proposed discovery consisted of two basic groups: (1) materials that were both readily available from other sources and were an existing part of the court's file in this matter; and (2) materials that may or may

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[9] We deny respondents' motion to strike this portion of Nejad's reply brief.

not have been obtainable from other sources but were irrelevant as a matter of substantive law"].)

In sum, Nejad has failed to show any error in the trial court's orders granting respondents' anti-SLAPP motions and striking his claims against respondents from the FAC. As the FAC itself and Nejad's own representations made clear, the claims sought to hold respondents liable for their conduct in the underlying divorce case. We note that Nejad had promised to sue Carson for that conduct, in furtherance of his avowed mission to punish Carson. The trial court's orders striking Nejad's claims therefore appear to have vindicated "the basic purpose underlying the anti-SLAPP statute: namely, to shield defendants from the undue burden of defending against claims filed not for the purpose of securing judicial redress, but to intimidate or harass on the basis of the defendant's constitutionally protected activity." (*Barry v. State Bar of California* (2017) 2 Cal.5th 318, 325.)

B. *Attorney Fees*

Nejad contends the trial court erred in calculating the amounts of fees to award respondents as prevailing anti-SLAPP movants. (See Code Civ. Proc., § 425.16, subd. (c).) "It is well established that '[t]he amount of an attorney fee award under the anti-SLAPP statute is computed by the trial court in accordance with the familiar "lodestar" method. [Citation.] Under that method, the court "tabulates the attorney fee touchstone, or lodestar, by multiplying the number of hours reasonably expended by the reasonable

hourly rate prevailing in the community for similar work.'"" (*569 East County Boulevard LLC v. Backcountry Against the Dump, Inc.* (2016) 6 Cal.App.5th 426, 432 (*569 East*).) "'With respect to the amount of fees awarded, there is no question our review must be highly deferential to the views of the trial court. [Citation.] As our high court has repeatedly stated, '"'[t]he 'experienced trial judge is the best judge of the value of professional services rendered in [the trial] court, and while [the court's] judgment is of course subject to review, it will not be disturbed unless the appellate court is convinced that it is clearly wrong' -- meaning that it abused its discretion."'"' (*Sweetwater Union High School Dist. v. Julian Union Elementary School Dist.* (2019) 36 Cal.App.5th 970, 994 (*Sweetwater*).) "[A]lthough the trial court has broad authority in determining the amount of reasonable legal fees, the award can be reversed for an abuse of discretion when it employed the wrong legal standard in making its determination." (*569 East*, *supra*, at 434.)

Nejad contends the court abused its discretion in failing to: (1) reduce the hourly rate claimed by Abernathy and Carson's counsel from $395 to no more than $275; (2) strike the hours claimed in 20 billing entries (five of Abernathy and Carson's, and 15 of Zuckerman's) for work allegedly unrelated to the anti-SLAPP motion; and (3) reduce the remaining hours to account for alleged block billing. As explained below, we accept Nejad's arguments as to only one instance, where the court, relying on an argument advanced by Zuckerman, awarded him $262.50 for

preparation of a demand letter not required by statute. In all other respects, the court acted well within its discretion in awarding fees in the amounts of $23,100 to Zuckerman and $31,916 to Abernathy and Carson.

1. Hourly Rate

"'In determining hourly rates, the court must look to the "prevailing market rates in the relevant community." [Citation.] The rates of comparable attorneys in the forum district are usually used.'" (*Nishiki v. Danko Meredith, P.C.* (2018) 25 Cal.App.5th 883, 898 (*Nishiki*).) The market-rate standard applies "'"regardless of whether the attorneys claiming fees . . . charge at below-market or discounted rates . . . ."'" (*Pasternack v. McCullough* (2021) 65 Cal.App.5th 1050, 1055 (*Pasternack*).) "[A] trial court has its own expertise in the value of legal services performed in a case [citations] and it may rely on its own familiarity with the local legal market in setting the hourly rate [citation]." (*Nishiki*, *supra*, at 899.) The trial court also may rely on "[c]ounsel's own declaration" in determining the market rate. (Pearl, Cal. Attorney Fee Awards (Cont.Ed.Bar 3d ed. 2021) Proof of Appropriate Rates, § 9.121.) "If the opposing party does not submit evidence to contradict evidence of the moving party's rates, they are presumed reasonable." (*Id.*, Challenging Claimed Rate, § 9.122.)

Here, the trial court acted within its discretion in finding Kim's $395 rate reasonable. Kim declared that his rate was below the market rate in the Los Angeles area for a

comparable attorney (a senior partner with nearly two decades of experience), as established by a study of the National Association of Legal Fee Analysis.[10] Although Kim did not attach a copy of the study he cited, the trial court was entitled to rely on Kim's declaration and its own familiarity with the local market. (See *Pasternack*, *supra*, 65 Cal.App.5th at 1059 ["The trial court was entitled to rely on [counsel]'s declarations to determine the reasonable rates for experienced attorneys in Los Angeles County"].) Further, because Nejad failed to submit any evidence contrary to Kim's declaration, Kim's claimed rate was presumptively reasonable. (See Pearl, Cal. Attorney Fee Awards, *supra*, Challenging Claimed Rate, § 9.122; *Raining Data Corp. v. Barrenechea* (2009) 175 Cal.App.4th 1363, 1375 [trial court did not err in finding counsel's rate reasonable in reliance on counsel's declarations, where opposing party "did not offer any evidence to challenge any statement" therein].) Contrary to Nejad's principal contention, Goodman's discounted rate of $350 ($100 lower than the rate he regularly charged other clients) did not establish a ceiling for Kim's rate. (See *Pasternack*, *supra*, at 1053-1054, 1058 [trial court acted within its discretion in awarding fees at market rate rather than discounted rate at which counsel billed insurer].)

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[10] Contrary to Nejad's contention, the trial court expressly found that the study cited by Kim applied to him in the context of this case.

2. Hours Spent

"An award of attorney fees to a prevailing defendant on an anti-SLAPP motion properly includes attorney fees incurred to litigate the special motion to strike (the merits fees) plus the fees incurred in connection with litigating the fee award itself (the fees on fees). [Citation.] However, a fee award under the anti-SLAPP statute may not include matters unrelated to the anti-SLAPP motion, such as . . . 'attending the trial court's mandatory case management conference[,]' because such fees 'would have been incurred whether or not [the defendant] filed the motion to strike.'" (*569 East*, *supra*, 6 Cal.App.5th at 433.) Nejad contends the trial court abused its discretion by awarding fees for matters unrelated to respondents' anti-SLAPP motions, reflected in five of Abernathy and Carson's billing entries and 15 of Zuckerman's.

a. Abernathy and Carson's Hours

Nejad has not shown any error in the trial court's awards of fees for Abernathy and Carson's challenged billing entries. The court reduced the hours claimed for two of these entries (each of which concerned a hearing that coincided with a case management conference). Nejad has not even acknowledged that the court reduced these hours, let alone shown that the court exceeded the bounds of reason in failing to reduce them further. (See *Premier Medical Management Systems, Inc. v. California Ins. Guarantee Assn.* (2008) 163 Cal.App.4th 550, 564 (*Premier*) ["In

challenging attorney fees as excessive because too many hours of work are claimed, it is the burden of the challenging party to point to the specific items challenged, with a sufficient argument and citations to the evidence. General arguments that fees claimed are excessive, duplicative, or unrelated do not suffice"].) Nor has Nejad shown an abuse of discretion with respect to the other challenged billing entries, which concerned (1) preparation of the application to file a longer memorandum, and (2) review of Nejad's complaint and his motion for relief from the discovery stay. The court justifiably found the review of these filings reasonably necessary for Abernathy and Carson's litigation of their anti-SLAPP motion.

The cases on which Nejad relies do not assist him. In most, the appellate courts merely deferred to reductions ordered by trial courts in their discretion. (See *569 East*, *supra*, 6 Cal.App.5th at 441 ["the record contains sufficient support for the trial court's decision to adjust downward the hour component"]; *Bernardi v. County of Monterey* (2008) 167 Cal.App.4th 1379, 1395 ["[Respondent] argues the trial court acted well within its discretion in finding that the number of hours claimed by [respondent]'s counsel for work performed in the CPRA litigation was reasonable, and that substantial evidence supports the court's finding. We agree"]; *Christian Research Institute v. Alnor* (2008) 165 Cal.App.4th 1315, 1318-1319 ["Substantial evidence supports the trial court's conclusion counsel leavened the fee request with noncompensable hours and vague,

indecipherable billing statements, destroying the credibility of the submission and therefore justifying a severe reduction. We may not reweigh the trial court's implicit credibility determination, and we therefore affirm the judgment"].) In other cases he cites, the courts addressed only entitlement to fees, rather than the amount of fees. (See *S. B. Beach Properties v. Berti* (2006) 39 Cal.4th 374, 377 ["plaintiffs voluntarily dismissed their entire action without prejudice *before* defendants attempted to file an anti-SLAPP motion. As a result, we conclude that defendants may not recover their attorney fees"]; *ComputerXpress, Inc. v. Jackson* (2001) 93 Cal.App.4th 993, 997-998, 1020 [reversing in part trial court's denial of anti-SLAPP motion, and holding that movants were entitled to attorney fees on remand].)

b. Zuckerman's Hours

We conclude the trial court abused its discretion in one minor respect, relying on a misunderstanding of the law to award Zuckerman $262.50 in fees for preparation of a "demand letter to dismiss." After Nejad argued in his opposition that the demand letter was unnecessary for the anti-SLAPP motion, Zuckerman replied that the letter was required under Code of Civil Procedure section 435.5. Accepting Zuckerman's argument, the court found the time spent on the demand letter appropriate because "there [wa]s a requirement to meet and confer" under Code of Civil Procedure section 435.5. This was a mistake of law. Code of Civil Procedure section 435.5 provides, "Before filing a

motion to strike pursuant to this chapter, the moving party shall meet and confer . . . ." (Code Civ. Proc., § 435.5, subd. (a).) An anti-SLAPP motion, however, is not filed pursuant to the specified chapter -- Code of Civil Procedure sections 435 to 437b -- but instead, pursuant to Code of Civil Procedure section 425.16, which includes no meet-and-confer requirement. (See Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2021) Ch. 7(II)-F ¶ 7:958 ["Unlike motions to strike generally . . . , there is no requirement that defendant meet and confer with plaintiff about the substance of the motion before filing an anti-SLAPP motion under CCP § 425.16"], citing *Trinity Risk Management., LLC v. Simplified Labor Staffing Solutions, Inc.* (2021) 59 Cal.App.5th 995, 1008.) Accordingly, we conclude the court erred in awarding $262.50 for preparation of the demand letter. (See *569 East*, *supra*, 6 Cal.App.5th at 434 ["the award can be reversed for an abuse of discretion when it employed the wrong legal standard in making its determination"].)[11]

Nejad fails to show any error in the court's award of $23,100 in remaining fees. He fails to acknowledge that the court struck the hours claimed for one of the challenged billing entries. He further fails to acknowledge that the court reduced the hours claimed for two other challenged entries. He has not shown that the court exceeded the

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[11] At oral argument, Zuckerman's counsel conceded that the remedy for this error is to reduce the award by $262.50.

bounds of reason in failing to reduce these hours further. (See *Premier*, *supra*, 163 Cal.App.4th at 564.)

Nor has Nejad shown that the court abused its discretion in awarding fees for the challenged billing entries concerning legal research and review of filings in this action. The court reasonably found research on the following topics reasonably necessary for the anti-SLAPP motion: (1) the anti-SLAPP statute's applicability to claims against a jointly retained, court-appointed expert; (2) the litigation privilege "and use of SLAPP motion to respond to complaint"; and (3) anti-SLAPP motions filed in similar actions. Similarly, the court reasonably found review of the following filings reasonably necessary: (1) Nejad's complaint "and documents from Zuckerman"; (2) Nejad's brief and declaration in opposition to Abernathy and Carson's anti-SLAPP motion; (3) Abernathy and Carson's reply in support of their anti-SLAPP motion; (4) Nejad's motion for reconsideration of the order granting Abernathy and Carson's anti-SLAPP motion; and (5) the court's tentative ruling on Zuckerman's anti-SLAPP motion.

We find no error in the awards for the remaining challenged billing entries. With respect to an entry for assembling an unspecified motion, the court credited Zuckerman's counsel's representation that this entry concerned the anti-SLAPP motion. Similarly, although Nejad argues that an entry for "Additional work, preparing Zuckerman declaration" was deficient for failing to identify the type of additional work performed, the court implicitly

credited Zuckerman's counsel's representation that the entry concerned only Zuckerman's declaration in support of the anti-SLAPP motion. We defer to the court's factual findings. (See *Christian Research Institute v. Alnor*, *supra*, 165 Cal.App.4th at 1322 ["'the trial court's resolution of any factual disputes arising from the evidence is conclusive'"].) Finally, with respect to an entry concerning a motion to advance the hearing date on Zuckerman's anti-SLAPP motion, Nejad fails to explain how the court exceeded the bounds of reason in concluding that "[d]ue to the backlog of cases on the court's congested motions calendar, it was reasonably necessary to seek to advance the special motion to strike." He therefore fails to show error. (See *Premier*, *supra*, 163 Cal.App.4th at 564.)

c. Block Billing

"The California courts do not require detailed time records. Trial courts have discretion to award fees based on declarations of counsel describing the work they have done and the court's own view of the number of hours reasonably spent." (Pearl, Cal. Attorney Fee Awards, *supra*, Recordkeeping Requirements Under California Fee-Shifting Law, § 9.83.) "Because time records are not required under California law [citation], there is no required level of detail that counsel must achieve." (*Id.*, § 9.84.) "Some courts have criticized 'block billing' (i.e., lumping all tasks performed on a day as a single entry for that day)," but "[m]any courts recognize that block billing is not automatically suspect or

grounds for a fee reduction." (*Ibid.*; see also *ibid.* ["[B]lock billing is commonly used and is not intended to facilitate 'padding' of hours but simply reflects the interrelated nature of many tasks performed during a day"]; *Sweetwater*, *supra*, 36 Cal.App.5th at 995 ["Appellants also complain that [fee movants' counsel] did not present billing timesheets to support their request, but presented declarations with general summaries of blocked-billing statements. 'The law is clear, however, that an award of attorney fees may be based on counsel's declarations, without production of detailed time records'"].) Where a court does reduce fees to account for block billing, it must do so in a manner reasonably proportionate to the extent of the problem. (See *Welch v. Metropolitan Life Ins. Co.* (9th Cir. 2007) 480 F.3d 942, 948 (*Welch*) [where only some hours were block billed, district court "clearly" erred in imposing 20 percent reduction to *all* hours, rather than reduction that "'fairly balance[d]' those hours that were actually billed in block format"].)[12]

Here, Nejad has failed to show the trial court abused its discretion in failing to reduce the hours claimed to account for block billing. As discussed above, to the extent the billing entries specifically challenged by Nejad combined work related to the anti-SLAPP motion with unrelated work, such as attendance at case management conferences, the

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[12] Nejad misrepresents *Welch*, asserting that it "approved" the "20% reduction in the total billing" that, in fact, it held was clearly erroneous.

court reduced the hours claimed. The court properly denied Nejad's request that it reduce the remaining hours by 30 percent, as such an across-the-board reduction would have been improper. (See *Welch, supra*, 480 F.3d at 948.) Nejad fails to identify other allegedly block-billed entries, and it is not our duty to scour the record in search of them, particularly because -- as acknowledged by the principal authority on which Nejad relies -- block billing is not "per se" objectionable. (*Christian Research Institute v. Alnor*, *supra*, 165 Cal.App.4th at 1325; see also Pearl, Cal. Attorney Fee Awards, *supra*, § 9.84; *Sweetwater*, *supra*, 36 Cal.App.5th at 995.)

In sum, we find no error in the trial court's award of fees to Abernathy and Carson, which we affirm in its entirety. We find only one minor error in the court's award of fees to Zuckerman, viz., the award of $262.50 in fees for preparation of a demand letter. We therefore affirm the order granting Zuckerman's fee motion as modified by a reduction of the fee award from $23,362.50 to $23,100.

DISPOSITION

The orders granting respondents' anti-SLAPP motions and the order granting Abernathy and Carson's motion for attorney fees are affirmed. The order granting Zuckerman's motion for attorney fees is affirmed as modified by a reduction of the fee award from $23,362.50 to $23,100 (reflecting the removal of $262.50 in fees awarded for counsel's preparation of a demand letter). Respondents are entitled to their attorney fees and costs on appeal. (See *Premier Medical Management Systems, Inc. v. California Ins. Guarantee Assn.* (2006) 136 Cal.App.4th 464, 479-480.)

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

MANELLA, P. J.

We concur:

WILLHITE, J.

COLLINS, J.